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BROWN *v.* FRIEDBERG.

March 18, 1920.

[102 S. E. 468.]

1. Specific Performance (§ 58*)—Contract Containing Penalty for Breach May Be Enforced.—Specific performance of a contract for the conveyance of land can be decreed, though it provides for a penalty for unliquidated damages in case of a breach, if the parties are not given an option to perform or pay the stipulated sum.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 634.]

2. Specific Performance (§ 58*)—Contract Held Not to Give Option to Pay Penalty Instead of Performance.—Where, after a contract for the sale of land had been embodied in a receipt for the earnest money, a written contract was made containing a clause for the payment of liquidated damages or penalty in case of breach, because the vendor feared the earnest money was not sufficient security, that clause was not intended to give vendor the option to refuse performance on payment of the stipulated sum, and she could be required to convey.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 634]

Appeal from Circuit Court of City of Newport News.

Suit for specific performance by Morris Friedberg against Lydia Brown. Decree for complainant, and defendant appeals. Affirmed.

Lett & Massie, of Newport News, and *John N. Sebrell, Jr.*, of Norfolk, for appellant.

J. Winston Read, of Newport News, for appellee.

MEANY et al. *v.* PRIDDY et al.

March 18, 1920.

[102 S. E. 470.]

Wills (§ 111 (1)*)—Must Be Authenticated by Signature of Testator Manifestly Intended as Such.—No mere intention or effort to dispose of property by will, however clearly expressed in writing, is sufficient, unless the purpose is executed in the single manner authorized by Code 1919, § 5229; that is, the writing itself being authenticated by decedent's signature, it not being sufficient to raise a doubt as to whether his name, used in the heading of the will and its body, was intended to authenticate the paper; the statute requiring signature manifestly as such.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 729, 730.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Appeal from Chancery Court of Richmond.

Petition for probate of the last will and testament for Virginia Deane Meany, deceased, by Thomas F. Meany and others, contested by Ida Yale Priddy and others. From an order refusing admission to probate, petitioners appeal. Affirmed.

R. H. Talley, of Richmond, for appellants.

Jas. E. Cannon and *S. A. Anderson*, both of Richmond, for appellees.

SOUTHERN RY. Co. v. FINLEY & SEYMOUR.

March 18, 1920.

[102 S. E. 559.]

1. Carriers (§ 219 (5)*)—Connecting or Delivering Carrier of Interstate Shipment Liable For Its Own Default.—Under the Carmack Amendment (U. S. Comp. St. §§ 8604a, 8604aa), authorizing the shipper of an interstate shipment to sue the initial carrier for the defaults of connecting carriers, but providing that nothing therein shall deprive any holder of a bill of lading of existing remedies or rights of action, a connecting or delivering carrier is liable for its own defaults resulting in damage to live stock.

[Ed. Note.—For other cases, see 15 Va-W. Va. Enc. Dig 155; 16 Va-W. Va. Enc. Dig. 247.]

2. Appeal and Error (§ 236 (2)*)—Objection on Account of Variance Should Be Made by Motion to Exclude Evidence.—In an action for damages to a shipment of live stock, an objection based on an alleged variance between an allegation that the shipment was delivered to defendant at L., and a bill of lading showing that it was delivered to connecting carrier at that point, should have been raised by motion to exclude the evidence, in view of Code 1919, §§ 6104, 6250, as to amendments.

[Ed. Note.—For other cases, see 13 Va-W. Va. Enc. Dig 482.]

3. Carriers (§ 288 (1)*)—Burden of Showing Cause of Damage to Shipment Unaccompanied by Shipper Is on Connecting Carrier Sued.—When an interstate carrier receives for transportation live stock in good condition unaccompanied by the owner or his agent, and delivers it in damaged or bad condition, the burden of proof as to the cause of the damage is on the carrier.

[Ed. Note.—For other cases, see 2 Va-W. Va. Enc. Dig. 719, 720.]

4. Trial (§ 156 (3)*)—On Demurrer to Evidence, Court Bound to Conclude That Damage Was Due to Defendant's Negligence.—Where, in an action for damages to an interstate shipment of live stock, the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.